U.S. Department of Commerce
National Oceanic and Atmospheric Administration

U.S. Environmental Protection Agency

Mr. Greg Aldrich, Acting Administrator
Water Quality Division
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204-1390

Dear Mr. Aldrich,

The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) have enclosed our initial assessment of Oregon's Implementation Ready (IR) TMDL approach for the Mid-Coast sub-basin and its ability to achieve and maintain water quality standards and enable Oregon Department of Environmental Quality (ODEQ) to satisfy the condition on its Coastal Nonpoint Pollution Control Program (or Coastal Nonpoint Program) for additional management measures for forestry. This letter responds to Paragraph 5 of the Final Settlement Agreement for Northwest Environmental Advocates v. Locke, et. al, Civil No. 09-0017-PK, in which EPA and NOAA agreed to provide the ODEQ with an initial written assessment by December 31, 2012, on:

- whether implementation of the Oregon Coastal TMDL approach (now referred to as the Implementation-Ready or IR-TMDL approach), in the Mid-Coast sub-basin, including safe-harbor best management practices (BMPs), is likely to result in actions that will achieve and maintain water quality standards (WQS); and
- whether ODEQ's plan for developing and updating TMDLs for all sub-basins in the Coastal Nonpoint Program management area using the IR-TMDL approach could satisfy the outstanding additional management measures for forestry condition on the State's Coastal Nonpoint Program.

When EPA and NOAA negotiated this milestone in the settlement agreement, we did so based on what ODEQ had committed to in its July 21, 2010, letter. Most importantly, ODEQ committed to completing the Mid-Coast IR-TMDLs, which would include specific BMPs, by June 30, 2012, as well as meeting other interim milestones, including providing examples of the safe harbor BMPs and additional detail on how the IR-TMDLs would address landslide prone areas and road management concerns. However, ODEQ has not met these deadlines and has subsequently informed EPA and NOAA that the Mid-Coast IR-TMDLs will not be complete until June 30, 2013, or later.

EPA and NOAA recognize the complexities that Oregon faces in pursuing this new IR-TMDL approach and the extensive effort expended by ODEQ's staff and management to make this approach successful. ODEQ has held numerous stakeholder advisory and technical workgroup meetings and has analyzed and presented a significant amount of information to support development of temperature, sediment, and bacteria IR-TMDLs for the Mid-Coast sub-basin.

These steps are important groundwork for the development and issuance of BMPs needed to meet TMDL water quality targets and ultimately completing the Mid-Coast IR-TMDLs to satisfy the outstanding condition for additional management measures for forestry on Oregon's Coastal Nonpoint Program.

However, without completed Mid-Coast IR-TMDLs that include specific safe-harbor BMPs and a better understanding of how the IR-TMDL process will address riparian and landslide-prone area protection and forest road issues, EPA and NOAA do not have sufficient information to determine if the IR-TMDL approach would: (1) enable Oregon to achieve and maintain applicable water quality standards; and (2) satisfy the additional management measures for forestry conditions in its Coastal Nonpoint Program. Based on what we have been presented to date, we have concerns regarding whether the current approach would enable the state to achieve those goals.

Most importantly, there has been limited progress on developing and identifying the specific BMPs which are key to meeting both water quality standards and the Coastal Nonpoint Program condition. In order to satisfy the additional management measures for forestry condition, Oregon must begin the analyses and stakeholder discussions about the BMPs needed to meet applicable water quality standards as soon as possible. Specifically, EPA and NOAA will need the following information:

- Additional detail on how ODEQ will determine the adequacy of the BMPs identified in the IR-TMDL process for meeting water quality standards;
- Additional detail on the approaches the state plans to take to address landslide prone areas and road density and maintenance;
- Examples of the safe harbor BMPs Oregon would use to address:
    - protection of riparian areas, including for Type-N streams
    - protection of landslide-prone areas
    - management/maintenance of forestry roads; and
- Load allocations and surrogate targets.

The enclosed assessment document provides additional information, based on the information available, on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current shortcomings, and what Oregon needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

According to the settlement agreement, EPA and NOAA must announce in the Federal Register our intent to fully approve or disapprove Oregon's Coastal Nonpoint Program by November 15, 2013. As we have shared with Oregon in the past, we must receive all information from Oregon explaining how the state believes it has satisfied the three remaining Coastal Nonpoint Program conditions by June 30, 2013, to meet this deadline. In addition, considering the time that has passed since EPA and NOAA last provided the state with interim decisions for other conditions on its program, we will need to work with the state to ensure that all rationales are as up-to-date as possible by June 2013, as well, before we move forward with an announcement in the Federal Register. Given the time it is taking the state to address its outstanding conditions, EPA and

NOAA are very concerned that we will not be able to announce our intent to fully approve Oregon's program by November 15, 2013. If we must disapprove the state's program, the Coastal Zone Act Reauthorization Amendments requires NOAA and EPA to withhold 30 percent of Oregon's Coastal Zone Management Act Section 306 and Clean Water Act Section 319 funding.

EPA and NOAA do not want to see the state lose critical funding that supports water quality and habitat protection. Working with Oregon to achieve full approval of its Coastal Nonpoint Program is a priority for both agencies and we will continue to work closely with ODEQ to expeditiously move its IR-TMDL effort forward and to enable the state to meet the other remaining conditions on its Coastal Nonpoint Program.

Sincerely,

Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Daniel D. Opalski, Director
Office of Water and Watersheds
Environmental Protection Agency, Region 10

Enclosure

cc: Dick Pedersen, Director, ODEQ
Gene Foster, Watershed Management Manager, ODEQ
Patty Snow, Coastal Management Program Manager, DLCD
Bill Blosser, Chair, OEQC
Nina Bell, Northwest Environmental Advocates
Paul A. Kampmeier, Washington Forest Law Center
Allison LaPlante, Pacific Environmental Advocacy Center, Lewis and Clark Law School

Enclosure

EPA and NOAA's Assessment of Oregon's Implementation-Ready TMDL Approach and the State's Progress in Addressing the Remaining Conditions on its Coastal Nonpoint Pollution Control Program

1) ***Will the Implementation of the Implementation-Ready TMDL, in the Mid-Coast Sub-basin, Likely Result in Actions to Achieve and Maintain Water Quality Standards (WQS)?***

ODEQ has not begun to evaluate the safe-harbor BMPs needed to achieve and maintain water quality standards. Absent these BMPs and a completed Mid-Coast IR-TMDL, EPA and NOAA cannot determine if the IR-TMDL approach is likely to result in actions that achieve and maintain WQS. However, based on the progress that has been made, we are concerned that the IR-TMDL approach would enable the state to achieve and maintain water quality standards.

Although ODEQ has fallen short of identifying specific BMPs and completing the Mid-Coast IR-TMDL, it has made good progress in establishing the geographic scope of the sediment IR-TMDL and the water quality targets for the TMDL to address turbidity and biocriteria listings. To determine the scope of sediment problems in the Mid-Coast, ODEQ used PREDATOR and Stressor ID methodology to assess the biocriteria impairments caused by sediment. ODEQ then determined percent fine sediment targets associated with the biological impairments to set sediment water quality targets for biocriteria listings—an important step for establishing a benchmark to assess which BMPs are needed to meet WQS. EPA and NOAA believe this methodology is credible and establishes an important link between aquatic life use and water quality.

However, ODEQ still needs to develop mandatory and enforceable BMPs for the Mid-Coast IR-TMDLs that, when implemented, would result in attainment of applicable WQS. If ODEQ chooses to allow the Designated Management Agencies (DMAs) to develop the BMPs, then ODEQ needs to determine whether the BMPs submitted by the DMAs are adequate and, if not, to require additional BMPs if DMA actions alone are not adequate to meet applicable WQS. The process ODEQ would use to make this assessment and require additional BMPs is not clear yet. In addition, it is not clear if the DMA-developed BMPs would be incorporated into the TMDL. If the BMPs are not part of the TMDL, then the TMDL would be more representative of a traditional TMDL, rather than an IR-TMDL and would likely not enable Oregon to satisfy its Coastal Nonpoint Program condition.

2) ***Will Oregon's Plan to Develop Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?***

Based on what EPA and NOAA have been presented to date, we do not believe the current IR-TMDL approach is likely to satisfy the outstanding additional management measures for forestry condition. The 1997 conditional approval findings for Oregon's Coastal Nonpoint

Program noted weaknesses in the state's ability to adequately address impacts from forestry roads, as well as protect riparianand landslide prone areas, among other issues.

Although a conceptual forest road strategy that ODEQ discussed with EPA has good potential, to date, ODEQ has not provided a required road strategy that is sufficiently specific. Key elements of a viable forest road strategy that could address outstanding concerns include, but are not limited to:

- Development of an inventory/assessment to identify where impacts from forestry roads exist;
- Development of a reasonable timeline for fixing forestry roads which have water quality impacts;
- Development of a requirement to track and report on progress made to fix identified forestry road problems. Implementation principles for the tracking program would include addressing the worst road problems or highest risk categories of road problems earlier in the overall timeline, as well as milestone-based targets to ensure steady progress on identified road work; and
- Identification of effective BMPs for road siting, construction, operation, maintenance, vacating, abandoning, and closing to ensure road stability, drainage of road runoff back to the forest floor rather than directly to streams and other waterbodies, and adequate protection of both fish and nonfish bearing streams. This could include establishing targets for the maximum percentage of a road network allowed to discharge directly to streams and other waterbodies, or other similar targets. This identification should also include periodic monitoring or inspections to track BMP implementation,determine if targets are being met, assess BMP effectiveness,, and the need to adjust BMPs in the future.

EPA and NOAA are also concerned about Oregon's lack of progress identifying additional management measures for the protection of riparian and landslide prone areas. Oregon Department of Forestry (ODF) is not considering requirements for the protection of riparian areas around nonfish bearing streams in its current riparian rulemaking effort. It is not clear that ODF will have developed adequate requirements for the protection of riparian areas around small and medium fish bearing streams through the ODF rulemaking process by the time EPA and NOAA must make a final decision on the adequacy of Oregon's Coastal Nonpoint Program.

In addition, ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish bearing streams in the IR-TMDL effort. There is a significant body of science to support increased protection of riparian areas around small and medium streams in Oregon. Increased no-cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are currently required on private forest lands for similar forest types in the two adjacent coastal states.

There are many practices that, in combination, would help Oregon meet the additional management measures for forestry condition by protecting riparian areas, reducing sediment loads, and addressing large wood and stream temperature issues, including: buffering key segments of nonfish bearing streams that affect downstream water quality above confluences

of nonfish bearing streams and fish bearing streams; buffering hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering special aquatic sites such as seeps, springs, wetlands, and beaver ponds. NOAA and EPA recommend that Oregon consider riparian protection approaches similar to those that have addressed Coastal Nonpoint Program requirements in neighboring coastal states.

Oregon has not yet provided sufficient information regarding additional management measures for landslide prone areas. ODF already requires management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon could also consider adopting requirements similar to Washington Forests and Fish rule provisions for protection of landslide prone areas.

A viable program for the protection of Oregon's landslide prone areas would include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors could be used in the designation. Landscape scale mapping and analysis tools (e.g., LiDAR and DEMs) could help focus risk identification and designation efforts. An array of BMPs, including no harvest and thinning at various levels to maintain root strength and reduce precipitation impacts on soils, could be required in high risk areas based on factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon may also wish to consider an option to provide flexibility for forest land owners to utilize certified geologists or engineers to develop BMP options that provide equal or greater protection than the more broadly required measures. The program Oregon develops to address landslide prone areas must provide adequate protection for both fish and nonfish bearing streams.

3) Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July 2010 letter to EPA and NOAA, ODEQ committed to completing a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for DMAs by June/July 2011. However, ODEQ has yet to finalize the guidance, and a "final" draft of *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* that EPA and NOAA reviewed and commented on in July 2012 still needed significant work.

While EPA and NOAA have been supportive of the potential for this approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on our review of the July 2012 "final" draft guidance, it is still unclear whether the TMDL Implementation Plans developed under this guidance need to include practices consistent with the 6217(g) management measure for new development and whether ODEQ has the authority to require implementation of the new development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). This gives us concern that this TMDL Implementation Plan Guidance for urban areas may not enable Oregon to satisfy its new development condition.

As ODEQ finalizes this guidance, it needs to ensure the guidance provides unambiguous instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their TMDL Implementation Plans (i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

It was our understanding that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the recommended new development management measure. While states can use voluntary approaches, backed by enforceable authorities, to meet their Coastal Nonpoint Program requirements (see the EPA-NOAA 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 "final" draft appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution. EPA and NOAA urge ODEQ to resolve this apparent discrepancy.

EPA and NOAA hope ODEQ will expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review as soon as possible so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point of sale inspections for systems within the Coastal Nonpoint Program management area. EPA and NOAA applaud Oregon's progress on rule development and the fact that it was on target for meeting benchmarks in its July 2010 commitment letter. The

proposed rules require all OSDS within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The state has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point of sale inspections and reliance on qualified inspectors, combined with the state's detailed inspection form, should enable the state to satisfy its OSDS condition when adopted.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon EQC for adoption until March 2013 to give ODEQ more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.

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When EPA and NOAA negotiated this milestone in the settlement agreement, we did so based on what ODEQ had committed to in its July 21, 2010, letter. Most importantly, ODEQ committed to completing the Mid-Coast IR-TMDLs, which would include specific ~~best management practices~~ (~~BMPs~~), by June 30, 2012, as well as meeting other interim milestones, including providing examples of the "safe harbor" BMPs ~~Oregon would use to address our concerns about adequate protection of riparian and landslide-prone areas and management/maintenance of forestry roads~~ and additional detail on how the IR-TMDLs would address landslide prone areas and road management ~~issues~~concerns. However, ODEQ has not met these deadlines and has subsequently informed EPA and NOAA that the Mid-Coast IR-TMDLs will not be complete until June 30, 2013, or later.

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Comment [AC1]: Note: This is the proper way to refer to the remaining condition related for forestry.

Comment [AC2]: I think this is an essential point and needs to be retained. EPA HQ had agreed. I reworded a bit to avoid "assumption" language that Kelly had issue with to make it clear that our decision was based on fact. DP Agrees

Comment [AC3]: Of is management measures the correct terminology? DP BMP is correct terminology

Comment [Don4]: Suggest changing to "specific safe-harbor BMPs"

meetings and has analyzed and presented a significant amount of information to support development of temperature, sediment, and bacteria IR-TMDLs for the Mid-Coast sub-basin. These steps are important groundwork for the development and issuance of ~~management measures~~ BMPs needed to meet TMDL water quality targets and ultimately completing the Mid-Coast IR-TMDLs to satisfy the outstanding condition for additional management measures for forestry on Oregon's Coastal Nonpoint Program.

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Most importantly, there has been limited progress on developing and identifying the specific BMPs which are key to meeting both water quality standards and the ~~outstanding~~ Coastal Nonpoint Program condition. In order to satisfy the additional management measures for forestry condition, Oregon must begin the analyses and stakeholder discussions about the BMPs needed to meet applicable water quality standards as soon as possible. Specifically, EPA and NOAA will need the following information:

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  - protection of riparian areas, including for Type-N streams
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  - management/maintenance of forestry roads; and
- Load allocations and surrogate targets.

Comment [AC5]: Or ODEQ? DP Either is ok. But since ODA and ODF are at the stakeholder table and the IR TMDLs will give them first crack at providing BMPs that meet the TMDL OREGON is better..

Comment [AC6]: We need to provide additional detail on what we want here. Talked with Dave to develop this sentence but TMDL folks should confirm that this is an accurate statement and what we were referring to here. DP - Alan, Jenny, Helen, this looks good to me whether its focused on DMA BMPs or DEQ BMPs…your call though

The enclosed assessment document provides additional information, based on the information available, on what EPA and NOAA feel are positive aspects of the IR-TMDL process, current shortcomings, and what Oregon needs to do to satisfy its remaining additional management measures for forestry condition and achieve and maintain applicable water quality standards. We have also included feedback on Oregon's approach for satisfying the other two conditions on its Coastal Nonpoint Program related to new development and onsite sewage disposal systems.

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Sincerely,

Margaret Davidson, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Daniel D. Opalski, Director
Office of Water and Watersheds
Environmental Protection Agency, Region 10

Enclosure

cc: Dick Pedersen, Director, ODEQ
Gene Foster, Watershed Management Manager, ODEQ
Patty Snow, Coastal Management Program Manager, DLCD
Bill Blosser, Chair, OEQC
Nina Bell, Northwest Environmental Advocates
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Enclosure

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2) ***Will Oregon's Plan to Develop~~ing~~ Implementation-Ready TMDLs throughout the Coastal Nonpoint Program Management Area ~~using~~ Satisfy the Outstanding Additional Management Measure for Forestry Condition on the State's Coastal Nonpoint Program?***

Based on what EPA and NOAA have been presented to date, we do not believe the current IR-TMDL approach is likely to satisfy the outstanding additional management measures for

Comment [AC7]: Should print this out as a separate document so page #s begin with 1.

Comment [kg8]: Plural? DP – I think Allison has it right but TMDL folks should confirm.

NOT SURE ON THIS. THERE ARE SEVERAL DISINCT "subbasins or watersheds" such as the Alsea, Siletz, and Siuslaw but I think Mid-Coast Sub-basin denotes the collective area covered by the TMDL…or I should say TMDLs, plural, because there is a TMDL for temp, sediment and bacteria. Someone in the Watershed Unit (Helen, Alan, or Jenny) should make the call on capitalizing, hyphens, and plural/singular with respect to how we denote this TMDL and area it applies to in a consistent way throughout this letter. Also, the question on whether to use CNP or CNPCP to denote coastal NPS program or coastal NPS plan (Allison or Don should make that call). We've used CNPCP in prior letters. DP

Comment [AC9]: I think this may be the better word choice. We say we don't have the info we need. Not having the info doesn't automatically mean the IR-approach wouldn't get you there, just that we can't make a determination. This phrasing is also consistent with statements we've made in the cover letter.

DP agree, especially in conjunction with next sentence.

Comment [AC10]: Flipped around to avoid a long string of prepositional phrasing that read awkwardly to me. I'm not sure this is a perfect solution.

DP reads better but Alan/Helen/Jenny should confirm.

Comment [AC11]: Original wording seemed awkward and somewhat repetitive to me. Attempted to revise. Please double check that statement is still accurate as I'm not an TMDL expert.

Comment [JC12]: From Alan: It should be clear that if DMAs are identifying the MMs that will be implemented, those MMs need to be identified and included in the TMDL that gets submitted to EPA for review and approval. If the MMs identified by the DMAs are not included in the TMDL, the TMDL would be more representative of a traditional TMDL vs. an IR-TMDL.

DP – key point especially given the evolution to use DMA BMPs first. Alan should confirm this

Comment [AC13]: Added building off of Allen's comment. Please confirm this is an accurate statement. DP Alan confirm?

forestry condition. The 1997 conditional approval findings for Oregon's Coastal Nonpoint Program noted weaknesses in the state's ability to adequately address impacts from forestry roads ~~management and maintenance issues~~, as well as protect riparian ~~areas,~~and land-slide prone areas, among other issues.

Although a conceptual forest road strategy that ODEQ ~~has~~ discussed with EPA has good potential, to date, ODEQ has not provided a required road strategy that is sufficiently specific. Key elements of a viable forest road strategy that could address outstanding concerns include, but are not limited to:

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Comment [kg14]: I added "forest" in a few places but I'm not sure this is correct. Is it?

DP SORT OF…the additional MM CNPCP condition is only for forest roads but DEQ is developing a road approach for forest, ag, and county roads. Lets keep "forest" in since that is the context in which I've discussed the strategy

Comment [AC15]: I don't understand this term. Is it needed? Could we just say "overall timeline as well as milestone-based targets…"?

DP delete "even flow or"….keep milestone-based

Comment [Don16]: Are these terms redundant? Recommend we delete "vacating" and keep abandoning".

EPA and NOAA are also concerned about ~~the lack of~~ Oregon's lack of progress identifying additional management measures for the protection of riparian and landslide prone areas. Oregon Department of Forestry (ODF) is not considering requirements for the protection of riparian areas around nonfish bearing streams in ~~their~~ its current riparian rulemaking effort. It is not clear that ODF will have developed adequate requirements for the protection of riparian areas around small and medium fish bearing streams through the ODF rulemaking process by the time EPA and NOAA must make a final decision on the adequacy of Oregon's Coastal Nonpoint Program.

In addition, ODEQ has not developed additional management measures for small and medium fish bearing streams or nonfish bearing streams in the IR-TMDL effort. There is a significant body of science to support~~ing~~ increased protection of riparian areas around small and medium streams in Oregon. Increased no-~~-~~cut buffers, higher tree retention targets, minimum canopy retention targets, and/or higher basal area targets are currently required on private forest lands~~,~~ for similar forest types in the two adjacent coastal states.

There are many practices that, in combination, ~~could~~ would help Oregon meet the additional management measures for forestry condition by protecting riparian areas, reducing sediment loads, and addressing large wood and stream temperature issues, including: buffering key segments of nonfish bearing streams that aeffect downstream water quality above confluences of nonfish bearing streams and fish bearing streams; buffering hollows, inner gorges, headwalls, unstable landforms, and stream initiation points; and buffering special aquatic sites such as seeps, springs, wetlands, and beaver ponds. NOAA and EPA recommend that Oregon consider riparian protection approaches similar to those that have addressed Coastal Nonpoint Program requirements in neighboring coastal states.

Oregon has not yet provided sufficient information regarding additional management measures for landslide prone areas. ODF already ~~has~~ requires~~d~~ management measures for protection of landslide prone areas that pose a risk to humans. A similar approach could be applied on high risk landslide prone areas to protect water quality and fisheries. Oregon could also consider adopting requirements similar to Washington Forests and Fish rule provisions for protection of landslide prone areas.

A viable program for the protection of Oregon's landslide prone areas would include a process for identifying and designating high risk landslide prone areas. Factors such as slope and landform, sediment and wood delivery potential, and geologic factors could be used in the designation. Landscape scale mapping and analysis tools (e.g., LiDAR and DEMs) could help focus risk identification and designation efforts. An array of BMPs, including no harvest and thinning at various levels to maintain root strength and reduce precipitation impacts on soils, could be required in high risk areas based on factors such as delivery potential, the sensitivity of the aquatic resources, existing instream conditions, or other parameters. Oregon may also wish to consider~~also could provide~~ an option to provide flexibility for forest land owners to utilize ~~a~~ certified geologists or engineers to develop BMP options that provide equal or greater protection than the more broadly required measures. The program Oregon develops to address landslide prone areas must provide adequate protection for both fish and nonfish bearing streams.

Comment [AC17]: Should we keep a bit more vague like above para to avoid mixed messages with WA Tribal issues? Besides WA FFA, are there other programs on fed lands that we could point OR to that we feel have good buffer requirements?

DP Yes. Neighboring is ok and helps ensure OR won't be considering LA or AL riparian requirements and the WA and CA are the best State examples but WA Tribal issues are a big deal.

Comment [AC18]: I thought they've had some general discussions?

DP sufficient fixes it.

Comment [Don19]: Should?

Comment [kg20]: What are these?

DP explained they are mapping and analysis tools

3) *Feedback on the State's Progress in Meeting the New Development Condition on its Coastal Nonpoint Program*

To address its remaining condition for new development, ODEQ has proposed to:

- develop guidance, consistence with the new development 6217 (g) management measure, for TMDL Implementation Plan Development for urban and rural residential areas within the Coastal Nonpoint Program management area boundary; and
- provide a strategy and schedule for completing and updating TMDL Implementation Plans to be consistent with that new guidance.

In its July 2010 letter to EPA and NOAA, ODEQ committed to completing a final draft of the guidance by December 31, 2010, releasing the final guidance by June 30, 2011, and beginning to hold workshops for DMAs by June/July 2011. However, ODEQ has yet to ~~complete~~ finalize the guidance, and a "final" draft of *Guidance for TMDL Implementation*

Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area that EPA and NOAA reviewed and commented on in July 2012 still needed significant work.

While EPA and NOAA have been supportive of the potential for this approach to address the new development management measure requirements, we are very concerned that the deadlines have slipped significantly. In addition, based on ~~EPA and NOAA's~~our review of the July 2012 "final" draft ~~guidelines~~guidance, it is still unclear whether the TMDL Implementation Plans developed under this guidance ~~would~~ need to include practices consistent with the 6217(g) management measure for new development and whether ODEQ has the authority to require implementation of the new development management measure, as needed (see comments EPA and NOAA provided to ODEQ by email on July 23, 2012). This gives us concern that this TMDL Implementation Plan Guidance for urban areas may not enable Oregon to satisfy its new development condition.

As ODEQ finalizes this guidance, it needs to ~~make sure~~ensure the guidance provides ~~clear~~ unambiguous instruction to the DMAs that practices consistent with the new development management measure need to be incorporated into their TMDL Implementation Plans (i.e., practices that will reduce post-development total suspended solid (TSS) loadings by 80% or reduce TSS loadings so that the average annual TSS loads are no greater than predevelopment loadings, and maintain post-development peak runoff rate and average volume to pre-development levels). The guidance also needs to clearly indicate that ODEQ can ensure implementation of the new development management measure, as needed.

It was our~~EPA and NOAA's~~ understanding that the Implementation Guidance would require Urban DMAs to include practices consistent with the new development measure within their TMDL Implementation Plans or, at a minimum, that ODEQ would have the ability to require implementation of the recommended new development management measure. While states can use voluntary approaches, backed by enforceable authorities, to meet their Coastal Nonpoint Program requirements (see the EPA ~~and~~ NOAA~~'s~~ 1998 *Final Administrative Changes Memo*), statements in Oregon's July 2012 "final" draft appear to contradict Oregon's September 23, 2005, legal opinion asserting that ODEQ does have authority to require implementation of the 6217(g) measures as necessary to control nonpoint source pollution. EPA and NOAA urge ODEQ to resolve this apparent discrepancy.

EPA and NOAA hope ODEQ ~~can~~ will expeditiously complete the *Guidance for TMDL Implementation Plan Development for Urban/Rural Residential Land Uses within the Coastal Nonpoint Management Area* and ensure that it clearly states that Urban DMAs need to include practices consistent with the new development measure and that ODEQ has the ability to ensure implementation of these practices, as needed. We strongly encourage ODEQ to share a revised final draft of the guidance with EPA and NOAA for review as soon as possible so we can confirm that these requirements are met or provide recommendations for how the draft can be improved further.

4) Feedback on the Oregon's Progress in Meeting the Onsite Sewage Disposal System (OSDS) Condition on its Coastal Nonpoint Program

To address its remaining condition for OSDS, ODEQ has proposed to develop rules to require point of sale inspections for systems within the Coastal Nonpoint Program management area. EPA and NOAA applaud Oregon's progress on rule development and the fact that it was on target for meeting benchmarks in its July 2010 commitment letter. The proposed rules require all OSDS within the Coastal Nonpoint Program management area to be inspected by a professional engineer, registered environmental health specialist, wastewater specialist or certified inspector at the time of property transfer and that the results of the inspection be reported to ODEQ. The state has also provided a sample inspection form that provides a detailed examination of the system beyond a simple visual inspection. The proposed rules requiring point of sale inspections and reliance on qualified inspectors, combined with the state's detailed inspection form, should enable the state to satisfy its OSDS condition when adopted.

EPA and NOAA are aware that ODEQ has decided to delay presenting the proposed rules to the Oregon EQC for adoption until March 2013 to give ODEQ more time to discuss the proposed rules with several state legislatures. We recognize some additional time may be needed to address potential concerns. However, we strongly hope that the adoption of the proposed rules will not be delayed beyond March 2013. In addition, EPA and NOAA expect ODEQ to ensure that significant changes to the proposed rules do not occur such that the rules would no longer enable Oregon to satisfy its remaining OSDS condition.